

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60863

FILE: B-185743

DATE: May 12, 1976

98959

MATTER OF: Fire Trucks, Inc.

DIGEST:

1. Despite allegation that clause included in IFB as required by regulation (ASPR § 7-2002.2(c)(ii)) provides that only acceptable evidence to establish time of bid receipt at Government installation is time/date stamp of installation, all evidence relevant to time of receipt of hand-carried bid is considered since regulation applies only for consideration of late mailed and telegraphic bids, and not late hand-carried bids.
2. Totality of information of record more reasonably supports conclusion that hand-carried bid did not arrive at designated depository room by time for bid opening, notwithstanding time/date stamp showing timely receipt. Time/date stamp was mechanical hand stamp, not automatic timepiece, and manually adjustable to show approximate time in 15-minute intervals.

This matter concerns a protest by Fire Trucks, Inc. (FTI), against the rejection of a bid submitted on invitation for bids (IFB) F09603-76-B-0406, issued by Warner Robins Air Logistics Center, Georgia (Robins). The contracting officer rejected the bid as late under the terms of Armed Services Procurement Regulation (ASPR) § 7-2002.2, Late Bids, Modification of Bids, or Withdrawal of Bids, which had been incorporated into the IFB.

ASPR § 7-2002.2 states in pertinent part:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

* * * * *

"(c) The only acceptable evidence to establish:

* * * * *

"(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation."

Bid opening was scheduled for 2:00 p.m., December 16, 1975, and the IFB directed that hand-carried bids were to be delivered to Building 1678, Room A-4, at Robins. According to FTI, its representative hand-delivered the bid to Room A-4 of Building 1678 at approximately 1:58 p.m. on December 16. At that time, FTI states, the room was unattended. The representative searched in other rooms along the corridor and found a procurement clerk in an office across the hall. After the representative had explained the circumstances, the procurement clerk ushered him to another office, where after further explanation, a secretary stamped FTI's sealed bid with the installation's time/date stamp and returned the bid to the representative. The imprint of the time/date stamp on FTI's bid envelope shows delivery at 2:00 p.m., December 16, 1975. The time/date stamp used to mark FTI's bid is not an automatic timepiece but rather simply a mechanical hand stamp, manually adjustable to show the approximate time at 15-minute intervals. Parenthetically, we have informally ascertained that as a result of FTI's protest, the contracting activity at Robins has ordered automatic digital time/date stamp equipment to replace the manual hand stamp used for this procurement.

The representative stated that he took the bid down the hall approximately 50 feet and entered the bid opening room at 2:04 p.m. At the time he entered, representatives of the two other bidders were present, as were the contracting officer and the bid opening officer, who was reading aloud one of the other two bids.

This sequence of events is, in the main, undisputed by Robins' personnel. However, three affidavits, later filed by the personnel whom the representative initially contacted (the procurement

clerk, the Chief, Contract Administrative Support Branch, and the secretary who time stamped the bid), state that the representative was not discovered and the bid was not stamped until 2:07 p.m. The contracting officer states that the representative entered the bid opening room at 2:10 p.m.

The record shows that, prior to the representative's entrance into the bid opening room, the bid opening officer had stated to the representatives of the other bidders and to the contracting officer, already present in the room, "No further hand-carried bids can be accepted on IFB's F069603-76-B-0406 and 76-B-3729; however, late acceptable bids may be received in the mail." The contracting officer further states that this statement was made at 2:00 p.m. This is based on his having observed the time clock in the lobby of the building just prior to entering the bid opening room. This clock is used by employees to check their time of arrival at and departure from the building. According to the record, the clock was checked for accuracy on January 28, 1976, against the Robins time standard used by the Federal Aviation Administration to regulate its flight instruments, and was found accurate. The clock had not been adjusted after the time of bid opening.

After the two bids had been read, FTI's representative tendered the bid to the contracting officer. He refused to accept the bid, explaining that it was late. The representative requested and received the opportunity to inspect the abstract reflecting the other two bids. After inspecting the abstract and recording the prices listed on it, the representative departed with the bid. On January 2, 1976, the bid was returned by FTI to the contracting officer accompanied by FTI's demand that the bid be accepted. At present, the bid remains unopened in the custody of the contracting officer. Award has been withheld pending our decision on the acceptability of FTI's bid.

FTI argues that the bid should not have been rejected as late, citing ASPR § 7-2002.2(c)(ii), supra, for the proposition that the only evidence acceptable to establish the date and time of receipt of a bid at the Government installation is the time shown by the time/date stamp on the bid envelope. This evidence indicates that the package arrived in time for bid opening. Since no extraneous evidence of the time of bid receipt may be considered, FTI reasons that the bid should be considered, suggesting also that the time shown by the time/date stamp determines the time of bid opening, rather than other timepieces. Finally, FTI believes that personnel should have been stationed in Room A-4, the bid depositary room.

On the other hand, Robins believes that the use of the time/date stamp as evidence should not exclude the use of other evidence such as that of the contracting officer and other involved personnel. The above-quoted "time/date stamp" ASPR provision applies only to mailed and telegraphic bids, because paragraph (a) of the provision applies only to mailed and telegraphic bids. Therefore, it would be inconsistent to apply the "time/date stamp" language in paragraph (c) to hand-carried bids.

We agree. In our view, ASPR § 7-2002.2, incorporated into the IFB, provides only for the consideration of late mailed and telegraphic bids, not late hand-carried bids. Therefore, the strict evidence requirements contained therein are not for application to the situation here.

While the regulation does not provide for the acceptability of late hand-carried bids, our Office has often considered the question of whether such bids were timely received. In so doing, we have always considered all relevant evidence in order to establish the time of receipt of a hand-carried bid. See, e.g., Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176; LeChase Construction Corporation, B-183609, July 1, 1975, 75-2 CPD 5; 51 Comp. Gen. 69 (1971). In Free State Builders, Inc., B-184155, February 26, 1976, 76-1 CPD 133, our Office looked to the subsisting evidence, including but not limited to, a time/date stamp.

In considering evidence to establish the timeliness of hand-delivered bids, we have given great weight to the declaration by the bid opening officer that bid opening time has arrived. Such a declaration serves as prima facie evidence of the arrival of bid opening time, and unless there is a clear record to contradict this evidence, the authorized declaration serves as the criterion of lateness. See Hyster Company, supra.

In light of the above, we will now discuss whether FTI's bid was late. Our prior recitation of the facts and views of the protester and Government personnel involved is in conflict as to exactly when the FTI bid was received. However, the record contains evidence from an independent disinterested source. A letter from Delta Air Lines, Inc. (Delta), states that the flight on which the FTI representative arrived at the Macon, Georgia Airport (the nearest commercial airport to Robins) experienced a 1-hour and 5-minute mechanical delay and landed at 1:55 p.m. The contracting

officer cites this letter in support of his position, noting that it is approximately 7.7 miles from the Macon Airport to Building 1678.

FTI states that the letter from Delta was incorrect and undoubtedly based on regular flight times without regard to the specific circumstances of the particular flight. FTI asserts that the pilot intentionally speeded up the plane upon learning of the representative's concern over the impending bid opening time, and that the plane landed at Macon Airport at 1:47 p.m. According to FTI, the representative arrived at Building 1678 at 1:55 p.m. and delivered FTI's bid to the bid depository room at 1:58 p.m. While, in the ordinary case where an automatic and exact time/date stamp machine is used, FTI's version of timely bid delivery would be corroborated, we cannot ignore the imprecision of the time/date stamp used here. As mentioned above, the stamp was only a manual hand stamp, adjustable at 15-minute intervals and the secretary who did the actual stamping stated:

"On Tuesday, 16 December 1975, I was sitting at my desk in Building 1678, Room A-2, when * * * [the procurement clerk] and a gentlemen unknown to me, came to the door of my office. He was to attend the bid opening and had a bid with him. I got up and walked around my desk to meet them, and looked at the clock on the wall of my office, noting that it was approximately seven minutes after two o'clock. I asked * * * [the] Branch Chief, if I should stamp the bid in, and she said yes. I hurriedly turned the manual time/date stamp and stamped the envelop."

We do not think the time stamp convincingly establishes timely bid arrival. In addition, FTI has not satisfactorily explained away the Delta letter, which renders unlikely the representative's alleged time of arrival.

After reviewing the evidence of record, we conclude that the totality of information more reasonably supports the conclusion that the FTI bid did not arrive at the designated depository room by 2:00 p.m. See Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393.

FTI also argues that personnel should have been present in the bid depository room to receive its bid. Since bid opening time had already arrived when FTI's bid was delivered, and no more

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bids could be accepted, there was no further need for personnel in the depository room. As to FTL's argument that the time shown by the time/date stamp should be used, rather than the time shown by other timepieces, in determining the time of bid opening, we believe that such action would be of little use in this instance, since the stamp was only a manual hand stamp and was itself set by reference to other timepieces.

Accordingly, the bid was properly rejected as late and ineligible for award consideration.

One further matter warrants comment. Government personnel should not have returned the late bid to the representative. Rather, the late bid should have been held unopened until after award and retained with other unsuccessful bids. See ASPR § 2-303.3 (1975 ed.). In view of our conclusion above, however, we do not find it necessary to discuss what effect, if any, the return would have had on the bid's acceptability.

Arthur H. ...
Deputy Comptroller General
of the United States